

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-349

July 14, 2004

VERIZON NEW ENGLAND d/b/a
VERIZON MAINE
Request for a Waiver of the Service
Quality Index Related to the Impact of
Snow and Ice Storms which Struck Areas
of Central and Southern Maine During the
Week of January 13, 2002

ADVISORS' REPORT
RECOMMENDING DENIAL
OF REQUEST FOR WAIVER
AND REQUIRING PAYMENT
OF SERVICE QUALITY
PENALTY

NOTE: This Advisors' Report contains the recommendation of the PUC Staff advisors assigned to this case. Although written in the form of an order, it does not constitute formal Commission action. Parties may file exceptions to this Report on or before **August 2, 2004**. We anticipate that the Commission will consider this Report at its Deliberative Session on **August 9, 2004**.

I. INTRODUCTION

In this Order we deny Verizon Maine's request for a waiver of the reporting and calculational requirements of the Service Quality Index (SQI) of the Verizon Maine Alternative Form of Regulation (AFOR). Under the proposed waiver, Verizon would exclude the results of January 2002 from the calculation of the SQI for the 2001-2002 SQI year (July 2001 through June 2002).

Under the terms of the AFOR, the Commission will consider such a waiver request if Verizon "makes a compelling demonstration that the effects of a particular significant major event should not be in the SQI for that year, because it could not be foreseen and its effects could not be anticipated." *Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX*, Docket No. 94-123, Order (May 15, 1995), Order at 83 (1995 AFOR Order). Our formal investigation (Docket No. 2002-151) into the

adequacy of utility services during the January 2002 ice storm, as well as a review of Verizon's SQI service results during several non-winter months, persuade us that Verizon has not made the required "compelling demonstration" for waiver and therefore has not justified the exclusion of its SQI performance for January 2002. Accordingly, we will require Verizon immediately to begin the process of providing to its customers the rebates required by its below-standard January 2002 SQI performance.

II. BACKGROUND

Verizon New England d/b/a Verizon Maine (Verizon, or the Company) has been operating under an AFOR since June 1995. As part of the current AFOR, Verizon is required to meet 15 metrics related to service quality, each of which has an established benchmark. If the Company fails to meet any of the benchmarks over the course of a year, it is required to pay a penalty amount for each metric whose benchmark is not met. There is no rebate mechanism for overall performance based on a composite or average of all the metrics.

The amount of the rebates is based on the severity of the deviations from the benchmarks. There is a maximum rebate amount per metric and a maximum total annual penalty. The SQI mechanism, however, allows the Company to seek exemptions from penalties, on a case-by-case basis, for "any major event that causes a very substantial drop in quality below the SQI and that was beyond [Verizon's] ability to anticipate." *Id.* On June 10, 2002, Verizon filed a Request for Waiver of the Service Quality Index due to the effect on the Index from snow and ice storms that struck areas of central and southern Maine during the week of January 13, 2002. Verizon failed to

meet the threshold of two metrics for the year: “% Troubles Not Cleared within 24 hours – Residence” and “PUC Complaint Ratio.” Verizon has requested the Commission to allow the Company to exclude the results of January 2002 for all 15 metrics (whether they were supposedly affected by the storm or not)¹ from its annual SQI calculations.

In its Request for Waiver, Verizon asserts that after the ice and snowstorms that began on Sunday, January 13, 2002, the Company attempted to cope with the damage caused by the storms, but that a substantial number of its customers, particularly in Hancock and Penobscot Counties and Mid-Coast communities, experienced extended service outage periods. Verizon states that the number of customer trouble reports was much higher than normal, making it nearly impossible to clear trouble reports within the 24-hour benchmark in the SQI. Verizon also asserted that repair work took priority over installation activities so that the SQI metrics related to the number of missed appointments and held order delay days also experienced adverse impacts. The Company asserts that the service quality results for January 2002 are an aberration and do not accurately reflect the level of service quality Verizon normally delivers. Verizon stated that its network and its team of employees performed admirably, but the severity of the damage caused by the storms was too much for Verizon to overcome within normal operating parameters. Verizon claims that the SQI results for January 2002 were not the result of management inattention, diversion of resources or inadequate performance of its employees or systems, and that the severity of the damage caused

¹ As shown below, Verizon met the annual benchmarks for the other 13 metrics. It therefore makes no difference whether the January 2002 results for those 13 metrics are excluded or not. .

by multiple storms made achievement of the Company's usual level of service quality impossible.

In March 2002, we opened an investigation into "the adequacy of utility services during events that interrupt electric power service, and, in particular, the adequacy of telephone service during power outages in Maine." *Public Utilities Commission, Investigation into the Adequacy of Utility Services in Maine During Power Outages*, Docket No. 2002-151, Notice of Investigation (March 26, 2002) at 1. ("2002-151 Investigation")

On October 22, 2002, in this case, we issued an "Interim Order Suspending Processing of Case and Requiring Payment of Certain Penalty Amounts." The Interim Order directed Verizon to credit its customers with SQI rebates for below standard service performance in the two categories described above for the SQI year of July 2001 to June 2002, but also stated that Verizon should temporarily exclude the results of January 2002.² The Interim Order noted that Verizon failed to meet the benchmarks for the year in both of those categories, even if the January 2002 results were excluded, and that inclusion, or not, of the January 2002 results would affect only the amount of the rebate. The order in effect ordered the interim rebate "as if the waiver request were granted,"³ but stated that we would address Verizon's waiver request after the Commission completed the 2002 Ice Storm investigation in Docket No. 2002-151. We

² With the January 2002 results excluded, the rebate amount was \$312,933 (\$259,615 for the PUC Complaint Ratio, and \$53,318 for the % Troubles Not Cleared within 24 hours – Residence).

³ Excluding the January 2002 results "as if the waiver request were granted" means that if the waiver ultimately were granted, no further rebate would be necessary. If, instead, we had temporarily denied the waiver request and later granted it, it would be necessary to impose a surcharge on customers.

emphasized that no conclusions should be drawn or inferred about our ultimate decision on the Company's waiver request, and that the Commission must determine if the January 2002 storm was so unusual or so beyond the Company's ability to anticipate and prepare for that a waiver from the service quality results would be warranted.

On February 11, 2004, the Hearing Examiner issued a Request for Comments that was sent to all parties in the AFOR proceeding in Docket No. 99-851. He requested that the comments should address "whether the waiver should be granted, including the effect, if any, that the Commission's decision contained in the November 23, 2003, Order in Docket No. 2002-151 (the Investigation Docket) should have on this case." No party, including Verizon and the Public Advocate, filed comments. We did not conduct evidentiary hearings in this case. The record in the 2002-151 Investigation fully addressed all the factual issues that could be relevant to a decision in this case. We therefore rely on that record, to the extent described below, for our decision in this case.

II. STANDARD FOR WAIVER AND STRUCTURE OF DECISION

As noted above, the *1995 AFOR Order* requires the event to be "major" and "beyond [Verizon's] ability to anticipate." It must also be one that "causes a very substantial drop in quality below the SQL... ." The 1995 Order also makes clear that it is the Company's burden to establish that the waiver should be granted. The Company must make a "*compelling demonstration* that the effects of a particular significant major event should not be in the SQL for that year (emphasis added)." *1995 AFOR Order* at 83.

The 2002-151 Investigation Order did not make express findings concerning Verizon's actions in response to the 2002 ice storm; instead it ordered Verizon to undertake some 20 improvements in the way it plans for and responds to weather-related emergencies. In reaching our decision in this case to deny exclusion of the January 2002 results, we cannot and do not rely on findings from that case. We rely instead on Verizon's failure, in the 2002-151 Investigation record, to establish both that the event was "beyond [its] ability to anticipate" and that the ice storm (as opposed to Verizon's response) was the major cause of the below-benchmark results for the two metrics in question.

III. DISCUSSION

Verizon has failed to show that the 2002 Ice Storm was *not* an event that "could not be foreseen and its effects could not be anticipated" by Verizon. As discussed above, we cannot rely on findings from the 2002-151 Investigation because we made no findings. We may, however, rely on evidence from that proceeding that was not rebutted or contested. The undisputed record indicates that prior to the weekend of the storm, Verizon was aware of the weather forecasts that predicted the storm, and that those forecasts indicated increased severity during the weekend. *2002-151 Investigation*, Tr. 11-15-02 at 109-111.

Verizon also failed to demonstrate a sufficient causal link between the Ice Storm and its failure to meet the benchmarks for the two metrics supposedly affected by the Storm. As noted above, the standard for granting a waiver of an SQI result requires Verizon to prove that the "major event ... *cause[d]* a very substantial drop in quality below the SQI" (emphasis added). The storm itself was undoubtedly a contributing

factor to the outages. It was the direct cause of the downed drop lines, but the length of outages due to downed drop lines was arguably attributable to delays in responding. The Storm's role in outages that occurred because Digital Loop Carrier units lost power was not as direct as those due to downed drop lines. Notwithstanding the storm and electric power outages caused by the storm, Verizon had greater control over whether the DLCs would actually lose power. DLCs are normally are powered by the electric distribution system, but when that power is not available, they instead rely on back-up battery power. When those batteries run down, it is standard practice by local telephone companies to recharge them with portable generators or to replace the batteries. It is also standard practice for those companies to own fewer generators than the number of DLCs, so that they must move the generators around to different DLC sites. *2002-151 Investigation*, Examiner's Report (August 29, 2003) at 10, 48-49; Tr. 7-18-02 at 98; Tr. 11-15-02 at 30-31; Declaration of Verizon witness Frank Connolly at 3-4.

Because of the battery backups, the loss of commercial power due to storm damage to the power companies' electric distribution systems did not immediately cause loss of power to the DLCs. Customer outages occurred later, when the batteries lost their charges and were not recharged or replaced. The 2002-151 Investigation record shows that all but one of the six independent telephone companies that were affected by the storm were able to recharge their batteries at DLC sites and had no outages due to loss of power to their DLCs. One company had a single DLC go out of service. Verizon, however, had at least 97 DLCs go out of service. Responses to ADR 1-8 and ODR 1-4, *2002-151 Investigation*.

Despite the weather forecasts predicting severe winter weather, the record in the 2002-151 Investigation indicates that Verizon did not take any extraordinary measures to prepare for the Storm other than to gas and fully stock its repair trucks, generators, and equipment. Tr. 11-15-02 at 111. On Sunday, the day of the storm, Verizon received a much larger number of trouble reports than normal, but it waited until Monday morning to undertake any non-routine measures such as “collecting internal and external data identifying the extent of the damage to the network.” *2002-151 Investigation*, Verizon response to ADR 1-3. On Tuesday (approximately 48 hours after the storm started and after Verizon determined on Monday that power outages would be lengthy and widespread), Verizon assigned an expert in DLC systems to coordinate the already on-going efforts to maintain power to the DLC systems. *2002-151 Investigation*, Declaration of Frank Connolly. Verizon also waited until Tuesday to obtain additional personnel from other areas in Maine and New Hampshire that were not affected by the storm. *2002-151 Investigation*, Tr. 11/15/02 at 77. The 2002-151 record also shows that Verizon took no action over a number of years to repeated concerns and recommendations by the Commission about the reliability of DLC systems that had to rely on battery power in the event of electric system outages. *2002-151 Investigation*, Examiner’s Report at 33-35 (discussion of prior recommendations). Thus, while the storm undoubtedly was an initial cause of events leading to prolonged outages and complaints about the outages, it was not necessarily the only significant cause. Another potentially significant cause of the poor service quality results was Verizon’s planning for the storm and its response to the conditions created by the storm.

Although we did not make express findings in the 2002-151 Investigation, we did require Verizon to make a large number of changes in its practices. That we found changes were necessary means we believe there is a high likelihood that Verizon's preparation and response to the storm were major causal factors for the poor results for the two metrics in question. Specifically, we adopted all of the 20 recommendations in the Examiner's Report (two with minor changes) for improving Verizon's responses to such emergencies. *2002-151 Investigation*, Order (Nov. 14, 2003) at 6-8. The 20 ordering paragraphs directed Verizon to make specific improvements in the following areas: how it anticipates and prepares for imminent weather emergencies; how it assesses the impacts of the emergencies on customer services; how it plans for, staffs, and manages service restoration efforts and the maintenance of back-up power to Digital Loop Carrier (DLC) systems; how it communicates with other utilities, County and State emergency management agencies, and the Commission; and how it assesses its performance in responding to the emergency after all services are restored. As these directives to Verizon cover all phases of its planning and response to the Ice Storm, we believe that Verizon's readiness and response, not just the storm event itself, were important reasons for the poor January 2002 results for the two metrics in question.

Finally, the SQI results for the two metrics that did not meet their benchmarks were similar or worse in a number of other contemporaneous months, during which there were no major storms. The similar results in those other months indicate that weather alone may not have been the only significant cause of the results in January 2002. In several months, both during the 2001-2002 SQI year and after, the results

were even worse than those for January 2002. For “% troubles not cleared with 24 hours-Residence” (SQI benchmark: 21.1%)” – the metric that Verizon had the greatest difficulty meeting – its performance in six more recent months⁴ was worse than the 38.6% result in January 2002:

<u>2002</u>		<u>2003</u>	
January	38.6	January	22.7
February	17.1	February	30.0
March	20.3	March	30.5
April	21.0	April	23.8
May	21.2	May	27.2
June	27.2	June	32.8
July	37.1	July	44.9
August	22.5	August	41.8
September	26.0	September	37.2
October	24.6	October	42.4
November	43.1	November	44.8
December	30.8	December	44.9

⁴ The other results shown here occurred after the 2001-2002 SQI year. They are sufficiently close in time, however, that they still support our view that Verizon has failed to show that the storm and power outages, as opposed to its response to them, was the more significant cause of its poor results for January 2002.

For the only other metric that resulted in a penalty – “PUC Complaint Ratio” (SQI benchmark: 0.52%),⁵ the results were worse than the January 2002 result (0.06) in half of the months (both winter and non-winter) during the 2001-2002 SQI year:

<u>2001</u>		<u>2002</u>	
July	0.06	January	0.06
August	0.05	February	0.07
September	⁶	March	0.08
October	0.06	April	0.09
November	0.08	May	0.07
December	0.08	June	0.06

These data indicate that severe weather was not the cause of Verizon's below-standard SQI performance during a substantial number of other months. The other causes in those months, whatever they were, may also have had a significant causal effect on the January 2002 results. Among other likely causes were Verizon operational practices.

For all of the foregoing reasons, we find that Verizon has failed to meet its burden to make a “compelling demonstration” that the Ice Storm itself, as opposed to its inability to respond properly to the conditions existing prior to, during, and after the Ice Storm, was the major cause of the poor results for the two metrics in question in January 2002.

⁵ The annual PUC Complaint Ratio is calculated by adding the monthly results. As with most metrics, the annual %Troubles Not Cleared metric is calculated by averaging the monthly results.

⁶ In recognition of the damage to Verizon's facilities from the destruction of the World Trade Center, the Commission waived the September 2001 SQI results for all metrics.

IV. DECISION

For the reasons explained above, we find that Verizon has not demonstrated sufficient grounds to grant its Request for Waiver of the January 2002 SQI results, and we therefore deny the request. We require Verizon to pay the penalty associated with its below-standard SQI performance in that month. The additional SQI rebate for the January 2002 SQI results is \$139,857, consisting of \$53,318 for %Troubles Not Cleared within 24 hours – Residence and \$86,539 for the PUC Complaint Ratio.[†] The total rebate for the 2001-2002 SQI year is \$452,790 (\$312,933 of which has already been paid), consisting of \$139,857 for the % Troubles Not Cleared within 24 hours – Residence and \$346,154 for the PUC Complaint Ratio.

Accordingly, we

1. DENY Verizon's Request for Waiver of the January 2002 SQI results; and
2. ORDER Verizon immediately to begin the process of providing its customers an additional rebate of \$139,857 for its below-standard SQI service performance for January 2002.

Respectfully Submitted,

Peter Ballou
Richard Kania
Douglas Cowie
PUC Staff Advisors

[†] Advisors' Note: Verizon may state any difference it may have with the calculations resulting in these amounts either in its exceptions to the Advisors' Report or by notifying the Staff immediately.